

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

UNITED STATES,

Plaintiff,

v.

Case Number 07-20526
Honorable Thomas L. Ludington

JOHN TYLER MCKINNEY, SR.,

Defendant.

ORDER DENYING WITHOUT PREJUDICE MOTION TO OPEN BILL OF REVIEW

A grand jury in the Eastern District of Michigan returned an eleven-count indictment against three defendants in 2007 charging them with various drug and firearms offenses. One of the defendants was Defendant John Tyler McKinney, Sr.

Defendant pleaded guilty to one count of distributing five or more grams of cocaine base and, in 2009, was sentenced to 120 months imprisonment. He appealed to the Sixth Circuit, which affirmed Defendant's sentence. He appealed to the Supreme Court, which declined to issue a writ of certiorari.

Returning to this Court, Defendant filed a petition for a writ of mandamus, which was denied. He moved for reconsideration of that decision, which was also denied. *United States v. McKinney*, 07-20526, 2012 WL 1947055 (E.D. Mich. May 30, 2012).

Defendant also moved for retroactive application of the Fair Sentencing Act of 2010. The motion was denied. Defendant appealed to the Sixth Circuit, which affirmed this Court's decision. Defendant then petitioned the Supreme Court for a writ of certiorari; the petition remains pending.

Returning once more to this Court, Defendant has filed a document entitled “motion to reopen bill of review.” ECF No. 141. Defendant writes that he seeks a sentencing modification based on *Descamps v. United States*, 130 S. Ct. 90 (2012). He does not elaborate on why that case requires a different decision in this case.

The reason for this omission, in all likelihood, is that Defendant does not know if it will. The writ of certiorari was granted in *Descamps* in August 2012. The case was argued in January 2013. But no decision has been rendered. Defendant’s motion is therefore premature.

Accordingly, it is **ORDERED** that Defendant’s motion to reopen bill of review (ECF No. 141) is **DENIED WITHOUT PREJUDICE**.

Dated: May 3, 2013

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney of record herein by electronic means and upon John Tyler McKinney Sr., #41866-039, at USP Atlanta, P.O. Box 150160, Atlanta, GA 30315 by first class U.S. mail on May 3, 2013.

s/Tracy A. Jacobs
TRACY A. JACOBS